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## Social Backgrounds of the Minnesota Supreme Court Justices: 1858-1968

Robert A. Heiberg\*

### I. INTRODUCTION

Sixty men have served as justices of the Minnesota Supreme Court since statehood in 1858. While individual biographies of most of them have appeared, almost nothing has been written about them as a group. Such a lack of attention to a state's highest court is not unique to Minnesota and has been decried by several political scientists as one of the great failings of the discipline.<sup>1</sup> This situation even prevailed with respect to the United States Supreme Court until 1959 when John R. Schmidhauser published his article, *The Justices of the Supreme Court: A Collective Portrait*.<sup>2</sup> Its purposes were to "determine basic recruitment factors and the place of the Court in American politics and society" so that "utilizing associational statistical techniques in the analysis of the relationship of background factors . . . [a study of] decision-making behavior . . . [might] be undertaken later."<sup>3</sup>

In order to facilitate comparative analysis, this Article will follow Schmidhauser's basic structure insofar as it is applicable to the Minnesota Supreme Court. Schmidhauser divides the United States Supreme Court's history into six relatively distinct historical periods, the last four of which roughly correspond to the 110 years since Minnesota became a state. The period from Minnesota statehood in 1858 to 1890 corresponds to Schmidhauser's 1862-1888 period. While he separates the period 1889-1919 from the period 1920-1932, this division is not meaningful in Minnesota, since only four new justices came to the court between 1920 and 1930, two of these in the last month of 1930. Therefore, these four have been included with the 19 justices reaching the court between 1891 and 1919. The period from 1931-1968, then, corresponds to Schmidhauser's final historical period.

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1. C. HYNEMAN, *THE STUDY OF POLITICS* 45 (1959); Schubert, *Behavioral Research in Public Law*, 57 AM. POL. SCI. REV. 439 (1963).

2. 3 MIDWEST J. OF POL. SCI. 1 (1959).

3. Schmidhauser, *The Justices of the Supreme Court: A Collective Portrait*, 3 MIDWEST J. OF POL. SCI. 1, 3 (1959) [hereinafter cited as Schmidhauser].

An attempt will also be made to use the same background factors for determining the social origins of the justices. Not only will this allow comparison, but also these factors—paternal occupation, occupational heredity, individual career patterns, ethnic origin, religion, and education—are considered most useful by social scientists.<sup>4</sup>

## II. INSTITUTIONAL HISTORY

Article VI, section 2, of the original 1857 Minnesota Constitution provided for a Supreme Court composed of a chief justice and two associate justices. The legislature was given the authority to increase the number of associate justices to four by a two-thirds vote. This authority was exercised in 1881,<sup>5</sup> and Governor Pillsbury appointed Greenleaf Clark and William Mitchell to fill these two posts.

By 1913, the work load of the court had become so heavy that the legislature authorized the court to appoint two commissioners.<sup>6</sup> The court then authorized the commissioners to perform all of the duties of an associate justice with the exception of participating in the votes on cases. Homer B. Dibell and Myron D. Taylor, both district judges, were appointed as commissioners. Dibell served until 1918, when he was appointed by Governor Burnquist to succeed Justice George L. Bunn. Edward Lees was appointed to replace Dibell and served until 1927, when Ingervall M. Olsen was appointed to replace him. Taylor retired in 1930 and was replaced by Charles Loring.

On November 4, 1930, the voters of Minnesota overwhelmingly approved an amendment to article VI, section 2, increasing the number of associate justices from four to six, and lame-duck Governor Theodore Christianson appointed the two commissioners—Olsen and Loring—to the two new posts.

In 1943, however, the work load of the court had again become so heavy that the legislature authorized the court to appoint as a commissioner any retired justice of the court.<sup>7</sup> Several retired justices have since served as commissioners under these

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4. Schmidhauser at 6.

5. Ch. 141, § 1, [1881] Minn. Laws 184.

6. Ch. 62, §§ 1-4, [1913] Minn. Laws 53-54.

7. Ch. 595, § 3, [1943] Minn. Laws, codified as MINN. STAT. §§ 2.724(2), 490.025 (1967). Ch. 14, § 5, [1957 (Extra Session)] Minn. Laws 1831, codified as MINN. STAT. § 2.724 (2) (1967), also gives the court the power to "by rule assign temporarily any retired justice of the supreme court or duly appointed commissioner of said court, or one district judge at a time to act as a justice of the supreme court."

provisions. In 1963, the legislature further authorized the appointment of any *resigned* justice as a commissioner.<sup>8</sup> At present Justice Frank T. Gallagher, retired, is serving with all of the powers and duties of a full associate justice. Thus, in effect, the court now has seven associate justices.

On November 6, 1956, the voters approved an amendment to article VI, section 2, authorizing the legislature to create two additional associate justiceships. However, the legislature has not acted pursuant to this authority. Thus, in order to lighten its work load, the court has begun to sit in five-man divisions on about two-thirds of the cases it hears.<sup>9</sup>

### III. POLITICAL PARTY AND MEANS OF REACHING THE COURT

While all members of the United States Supreme Court are appointed by the President,<sup>10</sup> a member of the Minnesota Supreme Court must be elected by the people of the state, either in the first instance<sup>11</sup> or at the first general election occurring more than one year after being appointed by the governor to fill a vacancy.<sup>12</sup> However, this formal difference is not as great as it may seem, since 60 per cent of the Minnesota Supreme Court justices first reached the court by gubernatorial appointment. In the most recent historical period, gubernatorial appointment has become the almost exclusive means of access to the court with 77.3 per cent of the justices since 1930 first reaching the court in this manner. In fact, during the past 20 years, C. Donald Peterson, elected in 1966, has been the only justice to reach the court first by election.

An additional apparent difference between the two courts is that the justices of the Minnesota Supreme Court must face election every six years,<sup>13</sup> while the justices of the United States Supreme Court are appointed for life.<sup>14</sup> This difference is also of little significance, since the position of the incumbent justice of the Minnesota Supreme Court has become virtually impregnable. Only 10 justices have ever been defeated for re-election—eight in the 20 year period between 1892 and 1912 and only one

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8. Ch. 760, § 1, [1963] Minn. Laws 1259, codified as MINN. STAT. § 480.21 (1967).

9. See MINN. STAT. § 2.724(2) (1967).

10. U.S. CONST. art. 2, § 2.

11. MINN. CONST. art. VI, § 8.

12. MINN. CONST. art. VI, § 11.

13. *Id.*

14. U.S. CONST. art. 3, § 1.

TABLE 1

Political Party and Means of Reaching the Court by Numbers and Percentages in Three Historical Periods

	1858-1890	1891-1930	1931-1968	Total
Republicans	9 (60.0%)	18 (78.3%)	11 (50.0%)	38 (63.3%)
Appointed	1 ( 6.7%)	1 ( 4.3%)	2 ( 9.1%)	4 ( 6.7%)
Appointed then Elected	4 (26.7%)	7 (30.4%)	6 (27.3%)	17 (28.3%)
Elected	4 (26.7%)	10 (43.5%)	3 (13.6%)	17 (28.3%)
Democrats	5 (33.3%)	5 (21.7%)	9 (40.9%)	19 (31.7%)
Appointed	0 —	3 (13.0%)	1 ( 4.5%)	4 ( 6.7%)
Appointed then Elected	2 (13.3%)	0 —	6 (27.3%)	8 (13.3%)
Elected	3 (20.0%)	2 ( 8.7%)	2 ( 9.1%)	7 (11.7%)
None	1 ( 6.7%)	0 —	2 ( 9.1%)	3 ( 5.0%)
Appointed	1 ( 6.7%)	0 —	1 ( 4.5%)	2 ( 3.3%)
Appointed then Elected	0 —	0 —	1 ( 4.5%)	1 ( 1.7%)
Total	15 (100%)	23 (100%)	22 (100%)	60 (100%)
Elected (first)	7 (46.7%)	12 (52.2%)	5 (22.7%)	24 (40.0%)
Appointed (first)	8 (53.3%)	11 (47.8%)	17 (77.3%)	36 (60.0%)

since. Although positions on the court were often the subject of heated political contests during the early years of statehood,<sup>15</sup> the first incumbent justice was not defeated at the polls until newly appointed Justice Greenleaf Clark, a nominal Republican, lost the Republican endorsement and the election to Charles E. Vanderburgh in 1881. Justice Vanderburgh and fellow incumbent Republican Justice Daniel Dickinson were themselves beaten in 1892 by Democrats Daniel Buck and Thomas Canty. Buck, Canty, and fellow Democrat William Mitchell were then defeated in 1898 by Republicans Calvin L. Brown, John A. Lovely, and Charles L. Lewis as part of a Republican sweep of every state constitutional office, except the governorship, and all seven congressional seats. The startling defeat of Mitchell—for 17 years one of the most distinguished and respected American jurists—revived a dying movement for creation of a non-partisan judiciary.

The importance of political party endorsement at that time is illustrated by the case of Justice Mitchell who had enjoyed both the Democratic and Republican endorsements up until 1898 when he lost the Republican endorsement and the election. In 1901, the legislature adopted Ch. 312, § 1, [1901] Minn. Laws 524, entitled "An act relating to the names of political parties on the official ballot." This Act provided:

That a political party which has heretofore or shall hereafter adopt a party name shall alone be entitled to the use of such name for the designation of its candidates on the official ballot, and no candidate nor party subsequently formed, shall be entitled to use or have printed on the official ballot as a party designation, any part of the name of a previously existing political party. And in no case shall the candidate of any political party be entitled to be designated upon the official ballot as the candidate of more than one political party, and shall be designated upon the official party ballot in accordance with the certificate of nomination first filed with the proper officers.

Therefore, when Justice Calvin L. Brown received the endorsement of both the Republican and Democratic parties in 1904, Secretary of State Peter E. Hanson refused to include the word "Democrat" after his name on the ballot. A petition for a writ of

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15. For example, in 1869 the Republican State Convention, as the result of inside political trading, failed to nominate incumbent Chief Justice James Gilfillan, instead nominating Christopher G. Ripley, a political unknown, as the Republican candidate for chief justice. During the ensuing campaign, Ripley was described by the St. Paul Daily Pioneer, a leading Democratic newspaper, as a "fourth-class country pettifogger, fitted possibly to conduct a limited practice in a justice's court." The Daily Pioneer suggested that for nominating Ripley the Republicans "ought to be debarred from holding conventions." Despite this rather intemperate political rhetoric, Ripley was elected.

mandamus ordering him to do so was then filed in the Supreme Court. Justices Brown, Lewis, and Lovely who were running for re-election disqualified themselves, and Governor Van Sant appointed District Judges H. R. Brill, Frank C. Brooks, and W. A. Cant to sit with Chief Justice Start and Justice Douglas to hear the case. In a 3-2 opinion written by Special Judge Brill, the court went out of its way to hold the statute unconstitutional under Minn. Const. art. IV, § 27, which provides: "No law shall embrace more than one subject, which shall be expressed in its title." The court concluded that the subject of preventing misleading use of a political party's name was entirely different from the subject of preventing dual endorsements from appearing on the ballot.<sup>16</sup> In a restrained dissent Justice Douglas pointed out that legislative acts should be given every presumption of validity and that all of the provisions of the statute were "fairly germane to the subject expressed in the title." Brown and Lewis were re-elected, but Justice Lovely lost the Republican endorsement and his seat to Charles B. Elliott.

In 1909, Democratic Governor John A. Johnson appointed Thomas D. O'Brien, a Democrat, to succeed Justice Charles B. Elliott, who had resigned to accept an appointment to the Supreme Court of the Philippines from President Taft. O'Brien was defeated in the 1910 election by Republican David F. Simpson.

In 1912, the legislature passed an act removing from the ballot party designation of candidates for seats on the Minnesota Supreme Court.<sup>17</sup> That fall Justice George L. Bunn, a Democrat appointed in 1911 by Democratic Governor John A. Johnson, was defeated by Republican Oscar Hallam in the first "non-partisan" election. However, Republican Governor Adolph O. Eberhart, in a conscious effort to remove partisanship from judicial selection once and for all, appointed Bunn to succeed Calvin L. Brown, who had resigned when he was elected chief justice. Bunn won election to this seat in 1914.

While the elimination of party designation did insulate the members of the court from the vagaries of partisan politics, it also removed from potential candidates the most important source of funds and organized support necessary to challenge an incumbent successfully. Despite the absence of party designation from the ballot, activity in one of the political parties re-

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16. *State ex rel. Day v. Hanson*, 93 Minn. 178, 100 N.W. 1124, 102 N.W. 209 (1904).

17. Ch. 2, § 2 [1912 (Special Session)] Minn. Laws 4, codified as MINN. STAT. § 203.41 (1) (1967).

mains the best way to become well-known to the governor, the bar, and the electorate, and thus to reach the Minnesota Supreme Court.

Democrat Frank T. Gallagher, who defeated Republican William Christianson in 1946, is the only other candidate to defeat an incumbent justice. Christianson had been appointed to fill the remainder of the term of Justice Luther Youngdahl who resigned to seek the governorship in 1946. The electorate had little time to familiarize itself with his name, and Gallagher was the brother of the popular former Chief Justice Henry M. Gallagher, and Justice Thomas F. Gallagher (no relation) was then sitting on the court. Running against the field, as was permitted at that time, Gallagher out-pollled both Christianson—shortly thereafter selected to preside at the Nuremburg trials—and 12 year veteran incumbent Julius J. Olson in the four man race for the two available seats.

The legislature subsequently further strengthened the position of an incumbent justice by adopting the so-called "alley plan" under which a candidate for a position on the court must file for election to a seat held by a specific justice.<sup>18</sup> Thus, a candidate can no longer run against the field and defeat one of the incumbents by finishing second or third. In addition, this act provided that whenever a justice is a candidate to succeed himself, the word "incumbent" shall be printed on the ballot after his name.<sup>19</sup> No incumbent has been defeated since the adoption of these provisions, and it has become highly unlikely that many qualified candidates would attempt to do so.<sup>20</sup>

None of the other four justices who first reached the court by election during the most recent historical period had to defeat an incumbent. In 1966, for the first time in years, there was

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18. Ch. 690, § 1, [1949] Minn. Laws 1237, codified as MINN. STAT. § 203.41 (2) (1967).

19. *Id.*

20. The strength of the incumbent's position is illustrated by the results of the 24 elections involving incumbents since the adoption of MINN. STAT. § 203.41 (3) (1967). In nine of these elections the incumbent was unopposed, while in seven of the others the incumbent won by a margin of at least two-to-one. In only three was the margin as close as five-to-four, and in each case the incumbent's plurality was approximately 100,000 votes (Chief Justice Loring versus Gordon C. Peterson in 1950; Theodore Christianson versus Mark Nolan in 1950; and Chief Justice Dell versus E. Luther Melin in 1954). While there were 15 contested elections, there have been only seven opposition candidates, since E. Luther Melin and William G. Dressel ran unsuccessfully six and four times respectively.



considerable public interest in an election for one of the associate justiceships. Among the six primary election candidates for the seat held by Democrat Thomas Francis Gallagher—who first filed for re-election and then withdrew—was his son Thomas Patrick Gallagher. Under Minnesota law<sup>21</sup> the six candidates would have been listed on the ballot under the heading:

For the office of Associate Justice of the Supreme Court to which Thomas Gallagher was elected for the regular term.

Recognizing that the junior Gallagher would be mistaken for his father and thereby have the incumbent's advantage, several of the other candidates brought an action to compel further identification on the ballot. Candidate Gallagher defended, claiming that since the word "incumbent" would not appear after his name as it would if he were in fact the incumbent, no further identification was necessary. However, the court in *Foley v. Donovan*<sup>22</sup> disagreed, pointing out that,

a great many of our voters are not personally acquainted with members of the judiciary, and particularly with members of the supreme court. They run on a nonpartisan ticket without benefit of party, platform or issues. They have little time for campaigning. They are known mainly by their names, and the opportunity for confusion where the names are identical or even similar is rife.

Since a Minnesota statute expressly provides that "[t]he name of a candidate may not appear on a ballot in any way which gives that candidate an advantage over his opponent except as otherwise provided by law,"<sup>23</sup> the court ordered that the ballot contain the following provisions:

For the office of Associate Justice of the Supreme Court to which Thomas Gallagher (whose full name is Thomas Francis Gallagher) was elected for the regular term

. . . .  
Thomas Gallagher (whose full name is Thomas Patrick Gallagher).

Gallagher polled nearly twice as many votes as any of the other five candidates in the primary election, but was beaten in the general election by Republican C. Donald Peterson, a former state legislator and unsuccessful candidate for lieutenant governor in 1962. The public controversy and a strong, politically well-known opponent prevented the incumbent's mantle from being passed from father to son.

During the first historical period, Republicans held a significant edge over the Democrats in court membership. Democrats Lafayette Emmett, Isaac Atwater, and Charles E. Flandrau swept

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21. MINN. STAT. § 203.41 (2) (1967).

22. 274 Minn. 501, 503, 144 N.W.2d 600, 603 (1966).

23. MINN. STAT. § 203.30(1) (1967).

the first Supreme Court election in 1858. However, Atwater and Flandrau resigned before the end of their terms and Emmett did not seek re-election. Only two other Democrats served on the court prior to 1890. Thomas Wilson, a former Republican, was appointed in 1864 to complete Flandrau's unexpired term and was elected chief justice in the fall of that year, while William Mitchell was appointed by Republican Governor Pillsbury in 1881 to fill one of the newly created justiceships.

In the second historical period, Republican dominance was even greater. The only five new Democrats to reach the court were Daniel Buck and Thomas Canty—elected and then defeated after only one term—and Thomas D. O'Brien, George L. Bunn and Albert Schaller—all of whom were appointed by a Democratic Governor, and none of whom won immediate reelection.

In the most recent period, however, Republicans and Democrats have had almost equal representation on the court, with the Republicans maintaining only a slight edge. Since appointment has become the most common means of reaching the court, and since only once has a governor appointed someone from the other political party, the political distribution closely corresponds to the number of years each party has held the governor's office.

#### IV. PATERNAL OCCUPATION

Schmidhauser suggests that of all "the diverse criteria available for the establishment of social status . . . paternal occupation has been accepted as the most trustworthy clue to the determination of social origin."<sup>24</sup> Joseph Schneider also has pointed out that what he calls "occupational heredity" gives the sons of those engaged in higher social status occupations a better chance to achieve fame in their own right.<sup>25</sup>

In order to facilitate comparison, the major non-political occupations of the fathers of the justices of the Minnesota Supreme Court have been classified according to social status along the lines suggested by Schmidhauser. However, adoption of his classification system created several problems, since seven of the fathers engaged in more than one occupation during the early life of the future justices. In each of these cases, an effort

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24. Schmidhauser at 6.

25. Schneider, *Fame and Social Origin*, 14 *SOCIAL FORCES* 358 (1936).

TABLE 2

Major Non-Political Occupations of the Fathers of the Minnesota Supreme Court Justices by Numbers  
and Percentages in Three Historical Periods

	1858-1890	1891-1930	1931-1968	Total
Higher Social Status	10 (66.7%)	11 (47.8%)	12 (54.5%)	33 (55.0%)
Proprietors				
Merchants	2 (13.3%)	1 ( 4.3%)	1 ( 4.5%)	4 ( 6.7%)
Manufacturers	2 (13.3%)	2 ( 8.7%)	1 ( 4.5%)	5 ( 8.3%)
Bankers	0	0	1 ( 4.5%)	1 ( 1.7%)
Miscellaneous	0	0	2 ( 9.1%)	2 ( 3.3%)
Wealthy, Prosperous Farmers	1 ( 6.7%)	5 (21.7%)	1 ( 4.5%)	7 (11.7%)
Professional Men				
Lawyers	2 (13.3%)	2 ( 8.7%)	3 (13.6%)	7 (11.7%)
Clergymen	2 (13.3%)	0	2 ( 9.1%)	4 ( 6.7%)
Physicians	1 ( 6.7%)	0	0	1 ( 1.7%)
Dentists	0	0	1 ( 4.5%)	1 ( 1.7%)
Teachers	0	1 ( 4.3%)	0	1 ( 1.7%)
Lower Social Status Occupations	4 (26.7%)	9 (39.1%)	9 (40.9%)	22 (36.7%)
Smaller Farmers	4 (26.7%)	9 (39.1%)	8 (36.4%)	21 (35.0%)
Mechanics, Laborers	0	0	1 ( 4.5%)	1 ( 1.7%)
Unknown	1 ( 6.7%)	3 (13.0%)	1 ( 4.5%)	5 ( 8.3%)
Total	15 (100%)	23 (100%)	22 (100%)	60 (100%)

was made to classify them in the occupation in which they were engaged for the longest period during the justice's formative years.

A more significant problem arose from Schmidhauser's separation of agricultural occupations into two categories: "plantation owners, wealthy farmers, or land speculators," which he classified as high status, and "small farmers," which he classified as low status.<sup>26</sup> None of the fathers could be classified as primarily a plantation owner or land speculator. In fact, the occupation of many was often listed simply as "farmer." In seven cases, however, evidence was found which indicated that the father was "prosperous," "wealthy," or "financially successful."<sup>27</sup>

However, during the formative years of those men who were to reach the court, a substantial majority of Minnesota's population lived outside of urban areas. A large percentage of these non-urban dwellers were small farmers. In rural, agriculturally oriented areas many small farmers were not members of a lower social class, but rather were the backbone of the religious, educational, and commercial activity of their communities, and thus of the state. Therefore, it is somewhat inaccurate to classify small farming in Minnesota as a lower social class occupation.

Of those who were the sons of small farmers, only Justice Thomas Canty seems to have risen from abject poverty, by working as a farm laborer, coal miner, and teacher before studying law. Justice Harry H. Peterson's father, a St. Paul carpenter, was the only laborer, artisan, or mechanic found to have been the father of a Minnesota Supreme Court justice.

Despite the relatively large number of unknowns in this category, it is clear that the majority of the fathers of Minnesota Supreme Court justices were engaged in high social status occupations. While this majority (55.0 per cent) is not nearly as high as that found for the United States Supreme Court (90 per cent), the difference is accounted for by the presence of three times as many sons of small farmers by percentage on the Minnesota court. Thus, those of lower socio-economic class backgrounds, as would be expected, have been seriously underrepresented on both courts.

## V. SETTING OF BIRTH

Another factor closely related to social origin and attitudinal

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26. Schmidhauser at 7.

27. These were the fathers of Greenleaf Clark, Daniel Buck, Charles L. Lewis, Oscar Hallam, Samuel B. Wilson, Charles Loring, and William C. Christianson.

TABLE 3

Birth Setting of the Minnesota Supreme Court Justices by Numbers and Percentages in Three Historical Periods				
	1858-1890	1891-1930	1931-1968	Total
United States	12 (80.0%)	21 (91.3%)	21 (95.5%)	54 (90.0%)
Urban	2 (13.3%)	3 (13.0%)	6 (27.3%)	11 (18.3%)
Small Town	7 (46.7%)	6 (26.1%)	7 (31.8%)	20 (33.3%)
Rural	3 (20.0%)	12 (52.2%)	8 (36.4%)	23 (38.3%)
Canada	1 (6.7%)	0	0	1 (1.7%)
Rural	1 (6.7%)	0	0	1 (1.7%)
Europe	2 (13.3%)	2 (8.7%)	1 (4.5%)	5 (8.3%)
Urban	0	1 (4.3%) (England)	0	1 (1.7%)
Small Town	1 (6.7%) (Scotland)	0	0	1 (1.7%)
Rural	1 (6.7%) (Ireland)	1 (4.3%) (Norway)	1 (4.5%) (Norway)	3 (5.0%)
Total	15 (100%)	23 (100%)	22 (100%)	60 (100%)

background is the type of community setting in which a man is born and spends his formative years.<sup>28</sup> Accepting Schmidhauser's conclusion that the setting of a person's birth and formative years is usually the same,<sup>29</sup> Table Number 3 has been constructed on the basis of the setting of the justices' birth.

In the first historical period, 13.3 per cent of the justices were born in cities, for the second period the figure is 17.4 per cent, while during the most recent period it is 27.3 per cent. The urban population of Minnesota since 1860 has been as follows:

1860—9.4 per cent	1910—41.0 per cent
1870—16.1 per cent	1920—44.1 per cent
1880—19.1 per cent	1930—49.0 per cent
1890—33.8 per cent	1940—49.8 per cent
1900—34.1 per cent	1950—53.9 per cent <sup>30</sup>

This indicates that only during the earliest period was the number of urban-born justices representative of the urban population. A different picture emerges, however, when we consider the residence of the justices when they became members of the court. Twenty-nine of the justices have been residents of Minneapolis, St. Paul, or Duluth.<sup>31</sup> Thus, any underrepresentation of the urban areas on the court is in the form of early social environment rather than residence. In fact, on the basis of residence, the urban areas were overrepresented in the earlier periods. This type of overrepresentation is not unexpected, however, since the urban areas—the seats of government and commerce—have considerably more occupational opportunities for attorneys than the rural areas. Thus, about one-fourth of the justices of the Minnesota Supreme Court are examples of the rural-urban migration that has characterized both Minnesota and American society over the last 50 years.

Ninety per cent of the Minnesota Supreme Court justices have been born in the United States, as compared with 94.3 per cent of the United States Supreme Court justices. Justice Thomas Canty was born in London; Justice James Gilfillan in Bannockburn, Scotland; Justice Thomas Wilson in Tyrone

28. Schmidhauser at 16.

29. While this conclusion undoubtedly is based partly on the practical consideration that it was easier to find complete, accurate, and detailed data on the justices' birthplaces than on their childhood residences, it does have considerable basis in fact. In addition, the family of the future justice was quite likely to bear the imprint of the community in which he was born, even if they moved from it during his formative years.

30. L. NELSON, *THE MINNESOTA COMMUNITY* 169 (1960).

31. 46.7 per cent, 43.5 per cent and 54.5 per cent for the three historical periods.

County, Ireland; Justice William Mitchell near Drummondville, Ontario, Canada; Justice I. M. Olsen in Sillehammer, Norway; and Justice Julius J. Olson on the Isle of Dona in Norway. Each came to the United States before the age of twelve, so that their childhoods were similar to those of American children of foreign-born parents. This corresponds to the Schmidhauser findings regarding the justices of the United States Supreme Court.

## VI. ETHNIC ORIGIN

Ethnic origin is also an important determinant of social background. Certain ethnic groups have traditionally been relegated to lower social status while others, especially the English, have occupied a significantly higher social position. In classifying the justices by ethnic origin, only their *predominant* ethnic strain was considered.

The membership of the Minnesota Supreme Court reflects the same northwestern European ancestry as Schmidhauser found in the United States Supreme Court,<sup>32</sup> but Scandinavian ethnic groups have had a significantly greater representation on the Minnesota court than the groups from the British Isles. This is not surprising in view of the Minnesota immigration pattern during the last century. Waves of Norwegian immigrants arrived in the United States in the periods 1865-1873, 1880-1893, and 1901-1905,<sup>33</sup> and a large percentage of them settled in Minnesota. Swedish immigration during these periods was similarly high, running consistently ahead of even Norwegian immigration.<sup>34</sup> By 1910, the population of Minnesota was 42.5 per cent Scandinavian.<sup>35</sup>

In 1911, Governor Adolph O. Eberhardt—himself a Scandinavian—appointed Andrew Holt, the son of Swedish immigrant parents, to the Supreme Court. He was to serve until 1942, but it was not until the number of associate justices was increased in 1930 that a second Scandinavian, Norwegian-born Ingervall M. Olsen was appointed to the court. At this time 48 per cent of the Minnesota population was Scandinavian. While it has been estimated that the Scandinavian population of Minnesota has remained at about 50 per cent,<sup>36</sup> since 1930 45.4 per cent of

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32. Schmidhauser at 18.

33. T. BLEGEN, *NORWEGIAN MIGRATION TO AMERICA* 454 (1931).

34. L. NELSON, *supra* note 30, at 40.

35. *Id.* at 39.

36. *Id.* at 40.

TABLE 4

Ethnic Origins of the Minnesota Supreme Court Justices by Numbers and Percentages in Three Historical Periods

	1858-1890	1891-1930	1931-1968	Total
Western Europe .....	15 (100%)	20 (87.0%)	18 (81.8%)	53 (84.3%)
British Isles .....	13 (86.7%)	17 (73.9%)	8 (36.4%)	38 (63.3%)
English .....	7 (46.7%)	12 (52.2%)	2 ( 9.1%)	21 (35.0%)
Scotch .....	2 (13.3%)	2 ( 8.7%)	0 —	4 ( 6.7%)
Irish .....	2 (13.3%)	2 ( 8.7%)	6 (27.3%)	10 (16.7%)
Scotch-Irish .....	2 (13.3%)	0 —	0 —	2 ( 3.3%)
English-Irish .....	0 —	1 ( 4.3%)	0 —	1 ( 1.7%)
French .....	1 ( 6.7%)	1 ( 4.3%)	0 —	2 ( 3.3%)
Dutch .....	1 ( 6.7%)	0 —	0 —	1 ( 1.7%)
Scandinavian .....	0 —	2 ( 8.7%)	10 (45.5%)	12 (20.0%)
Norwegian .....	0 —	1 ( 4.3%)	5 (22.7%)	6 (10.0%)
Swedish .....	0 —	1 ( 4.3%)	5 (22.7%)	6 (10.0%)
Central Europe .....	0 —	0 —	4 (18.2%)	4 ( 6.7%)
German .....	0 —	0 —	4 (18.2%)	4 ( 6.7%)
Unknown .....	0 —	3 (13.0%)	0 —	3 ( 5.0%)
Total .....	15 (100%)	23 (100%)	22 (100%)	60 (100%)



the new justices have been Scandinavian.<sup>37</sup> This growth of Scandinavian representation on the Minnesota court confirms Schmidhauser's contention that "... the pattern of judicial selection has tacitly recognized the coming of age politically of many, but not all ethnic and religious groups in America."<sup>38</sup>

The "but not all" portion of the above quotation is illustrated by the comparatively small representation of Minnesota's sizeable German population on the state's highest court. Germans comprised the largest single immigrant group in Minnesota from 1860-1900.<sup>39</sup> In 1910, Germans outnumbered either Swedes or Norwegians, 26.7 per cent of Minnesota's population being of German ethnic origin. This percentage is accurate today, though it was likely a great deal higher in the last decades of the nineteenth century. Only four men of German descent have served on the court, all in the most recent historical period. The first was Maynard E. Pirsig, appointed to the court in 1942 to fill the last few months of an unexpired term. The second, Thomas O. Streissguth, was also appointed in 1942 and again in 1944 to fill unexpired terms. Lee Loevinger, whose ethnic origins were German-Jewish, was the third, but he served only one year before resigning. Thus, Justice Walter F. Rogosheske—appointed in 1962—is the only justice of German extraction to serve on the court for any significant length of time. Only 6.7 per cent of the justices of the Minnesota Supreme Court have been of German descent, while Germans have comprised approximately one-quarter of Minnesota's population.

During the first two historical periods, justices whose ethnic origin was somewhere in the British Isles numbered 86.7 per cent and 73.9 per cent. This percentage fell to 36.4 per cent in the most recent historical period, due mostly to the increase in the number of Scandinavian justices. Over this 110 year period, 86 per cent of the justices of the United States Supreme Court were of British Isles ethnic origin.

Bishop John Ireland, in the mid-nineteenth century, actively promoted Irish-Catholic immigration to Minnesota. Like the Scandinavian and German ethnic groups, these Irish had little representation on the court until the most recent period. The three early Irish justices—Thomas Wilson, John M. Berry, and Thomas Canty—were all Protestants. Justice Thomas D.

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37. By comparison, only one Sandinavian has served on the United States Supreme Court.

38. Schmidhauser at 20.

39. L. NELSON, *supra* note 30, at 40.

O'Brien who served from 1909 to 1911 was the only Irish-Catholic until Governor Floyd B. Olson appointed John P. Devaney chief justice in 1931. Since then five other Irish-Catholics have served on the court—Henry M., Frank T., and Thomas Gallagher; William P. Murphy; and Robert Sheran.

During the earlier periods, the ethnic origin of Minnesota Supreme Court justices parallels that of those on the United States Supreme Court—mostly English, Scotch, and Irish-Protestant. During the last 35 years, however, there has been a marked change. Although the Germans have lagged behind the Scandinavians and Irish-Catholics in achieving representation on the court in proportion to their number, these immigrant groups in general have fared quite well.

## VII. RELIGIOUS AFFILIATION

The relationship between religious denomination and social class in American society has been fairly well established.<sup>40</sup> Certain denominations have traditionally been associated with the upper and lower social classes. In between these two denominational categories, according to Schmidhauser, are the Roman Catholic, Jewish, and Quaker religious groups.<sup>41</sup> These groups have a significant membership in both the upper and lower social classes, but even their upper class members have been discriminated against by the traditional American Protestant elite.<sup>42</sup>

It is not surprising that, in the 1858-1890 period, 93.3 per cent of the justices of the Minnesota Supreme Court were affiliated with the higher social status Protestant denominations. Only Chief Justice Lafayette Emmett did not definitely fit into this category—there being only an indication of Protestant religious preference. During the comparable period, Schmidhauser found that 76 per cent of the justices of the United States Supreme Court were affiliated with high status denominations.

During the 1890-1931 period, 65.2 per cent of the Minnesota justices were affiliated with the higher social status denominations. Justice Daniel Buck, who served during this period, has been the lone Quaker. Justice Thomas D. O'Brien, appointed in 1909 by Governor John A. Johnson, and Justice Albert Schaller,

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40. See H. NIEBUHR, *THE SOCIAL SOURCES OF DENOMINATIONALISM* (1957); Pope, *Religion and Class Structure*, *ANNALS OF THE AM. ACADEMY OF POL. AND SOC. SCI.*, March, 1948, at 84-91.

41. Schmidhauser at 21.

42. Pope, *supra* note 40, at 84.

TABLE 5

Religious Affiliations of the Minnesota Supreme Court Justices by Numbers and Percentages in Three Historical Periods.

	1858-1890	1891-1930	1931-1968	Total
High Social Status Denominations .....	14 (93.3%)	15 (65.2%)	6 (27.3%)	35 (58.3%)
Presbyterian .....	5 (33.3%)	3 (13.0%)	3 (13.6%)	11 (18.3%)
Congregational .....	1 ( 6.7%)	6 (26.1%)	1 ( 4.5%)	8 (13.3%)
Episcopal .....	3 (20.0%)	4 (17.4%)	1 ( 4.5%)	8 (13.3%)
Unitarian .....	3 (20.0%)	2 ( 8.7%)	1 ( 4.5%)	6 (10.0%)
Universalist .....	1 ( 6.7%)	0 —	0 —	1 ( 1.7%)
French Calvinist .....	1 ( 6.7%)	0 —	0 —	1 ( 1.7%)
Intermediate Social Status Denominations .....	0 —	3 (13.0%)	6 (27.3%)	9 (15.0%)
Roman Catholic .....	0 —	2 ( 8.7%)	6 (27.3%)	8 (13.3%)
Quaker .....	0 —	1 ( 4.3%)	0 —	1 ( 1.7%)
Jewish .....	0 —	0 —	0 —	0 —
Lower Social Status Denominations .....	0 —	1 ( 4.3%)	9 (40.9%)	10 (16.7%)
Lutheran .....	0 —	1 ( 4.3%)	9 (40.9%)	10 (16.7%)
Protestant .....	1 ( 6.7%)	3 (13.0%)	0 —	4 ( 6.7%)
Unknown .....	0 —	1 ( 4.3%)	1 ( 4.5%)	2 ( 3.3%)
Total .....	15 (100%)	23 (100%)	22 (100%)	60 (100%)

appointed in 1915 by Governor Hammond, were the only Roman Catholics to serve during this period. Justice Andrew Holt was the first member of a so-called lower social status denomination to serve on the court. A Lutheran,<sup>43</sup> he was appointed by Governor Eberhart in 1911, elected in 1912, and re-elected until his retirement in 1942. No indication other than Protestant was found for Justices James H. Quinn, Thomas Cauty, and Homer B. Dibell.

In the most recent period the higher social status denominations accounted for only 27.3 per cent of the court's membership as compared with over 50 per cent of the United States Supreme Court's membership. Six Roman Catholics—27.3 per cent of the court's new members—reached the court during this period, compared to 13 per cent for the United States Supreme Court. Roman Catholics comprised 38 per cent of Minnesota's population in 1956,<sup>44</sup> so despite the sharp increase in the number of Roman Catholics on the court, they are still slightly underrepresented. Another important trend of the last 35 years is the increase in the number of Lutherans serving on the court. Nine were appointed or elected during this period, accounting for 40.9 per cent of the court's new membership.

Emmett W. Bashful's study of the Florida Supreme Court revealed that 58.3 per cent of the Florida justices between 1943 and 1955 were either Baptists or Methodists, while the remainder were members of high social status denominations.<sup>45</sup> Given the religious composition of Florida's population, this is comparable to the representation given Lutherans and Catholics in Minnesota.

Schmidhauser discusses the contention that Roman Catholics and Jews always should be represented on the United States Supreme Court. He concludes:

The very controversy over the existence of the "custom" has

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43. It should be noted that Lutherans occupy a different position in Minnesota society than any other state. In 1956, Lutherans comprised 41 per cent of Minnesota's population as compared to less than 10 per cent of the nation's population. Lutherans in Minnesota may be found in all social classes with no substantial majority in any one. Pope points out that even in normal communities, "[t]he Lutheran denominations are harder to classify, because of their association with farmers, with particular ethnic backgrounds, and with skilled workers." Pope, *supra* note 40, at 84. For the sake of comparability with Schmidhauser, however, Lutherans have been classified in the lower social status category.

44. Nelson, *supra* note 30, at 116.

45. E. BASHFUL, *THE FLORIDA SUPREME COURT: A STUDY IN JUDICIAL SELECTION* (1958).

political significance, and it may be assumed that the religious representation, whether accepted or not, must play a part in subsequent presidential consideration of judicial selections.

No such custom appears in Minnesota. Governors Johnson and Hammond appointed the first two Catholics to the court. Justices O'Brien and Schaller were both prominent and active Democrats and their appointments were no doubt politically rather than religiously motivated. John P. Devaney was Minnesota's first Roman Catholic chief justice. He was appointed by Democratic Governor Floyd B. Olson and later resigned to help manage Franklin Roosevelt's 1940 presidential campaign. Democratic Governor Elmer Benson then appointed fellow Democrat Henry M. Gallagher to succeed Devaney as chief justice. Again both of these appointments were motivated by political rather than religious considerations. The next two Catholic justices—Thomas F. and Frank T. Gallagher—were both elected. Democratic Governor Orville L. Freeman appointed William P. Murphy—a Catholic and fellow Democrat—in 1955 at a time when two other Catholics were serving on the court. The most recently appointed Catholic justice, Robert Sheran—a Democrat—was appointed by Republican Governor Elmer L. Anderson also when two Catholics were already on the court. This would indicate that religious representation has not been an important factor in the choice of Minnesota justices.

Although people of the Jewish faith comprised about 1.5% of the state's population in 1964—and comprised a significantly larger percentage of the Minnesota bar—no Jewish justice has ever served on the Minnesota Supreme Court. Justice Lee Loevinger's father, Judge Gustavus Loevinger, was a German-Jew who was prominent in St. Paul Zionist organizations, while his mother was an active Unitarian. None of Loevinger's biographies list him as affiliated with any particular religious group.

Fifty-eight and three-tenths per cent of the justices who have served on the Minnesota Supreme Court have been affiliated with higher social status Protestant religious denominations, while 70.4 per cent of the United States Supreme Court justices have been members of similar denominations. The difference is that 10 Lutherans (16.7 per cent) served on the Minnesota court while only one has been a member of the United States Supreme Court. While Roman Catholics have comprised only 6.6 per cent of the United States Supreme Court, this figure is 13.3 per cent for the Minnesota court. As with the Lutherans, Catholic representation has largely occurred during the last 35 years. Schmid-

hauser found that the percentage of United States Supreme Court justices who came from the higher social status denominations was declining. This same trend was found in Minnesota, though entirely in favor of Lutherans and Roman Catholics. Today, the Minnesota Supreme Court is composed of three Lutherans, two Roman Catholics, a Presbyterian, and a Unitarian—a strong indication of this trend.

### VIII. EDUCATIONAL BACKGROUND

One of the greatest benefits accruing to those raised in a higher status social environment is educational opportunity. Only 13 of the 60 Minnesota Supreme Court justices did not attend either a college or a private academy. Of the 13, five attended a law school, which means that only 13.3 per cent—none in the most recent period—had no formal education beyond public schools.

In the first historical period, 73.3 per cent of the justices attended some college or university. This percentage declined to 47.8 per cent in the middle period, but the decline was accompanied by an increase from zero to 30.4 per cent in the percentage of justices attending private academies. Of the 11 justices in the 1858-1890 period who attended a college or university, 63.6 per cent attended an Ivy League school. In the second period 63.6 per cent of this same group attended college in Minnesota or a neighboring state. During the most recent historical period, 88.2 per cent of those attending college went to school in Minnesota, 73.3 per cent of these to the University of Minnesota.

Thirty-three and three-tenths per cent of the justices in the first historical period graduated from a law school, 80 per cent of these graduating from Ivy League law schools. In the second historical period 65.2 per cent of the new justices graduated from law schools, mostly at large state universities. Every justice coming to the court in the last 37 years graduated from a law school. Sixty-three and six-tenths per cent of these graduated from the University of Minnesota Law School, while another 18.2 per cent graduated from other law schools in the Minneapolis-St. Paul area.

Although 30 per cent of the justices of the Minnesota Supreme Court did not go to law school, this does not indicate that they had inferior legal educations. Thirteen of these 18 justices studied in the offices of some of the most prominent lawyers, judges, and politicians of their day. As shown in Table 8, these

TABLE 6

Non-Legal Education of the Minnesota Supreme Court Justices by Numbers and Percentages in Three Historical Periods				
	1858-1890	1891-1930	1931-1968	Total
Colleges and Universities (Attended by more than one Justice)	11 (73.3%)	11 (47.8%)	17 (77.3%)	39 (65.0%)
Minnesota	0	2 ( 8.7%)	11 (50.0%)	13 (21.7%)
Wisconsin	0	4 (17.4%)	0	4 ( 6.7%)
Yale	3 (20.0%)	0	1 ( 4.5%)	4 ( 6.7%)
Harvard	2 (13.3%)	0	0	2 ( 3.3%)
Dartmouth	2 (13.3%)	0	0	2 ( 3.3%)
St. Thomas	0	0	2 ( 9.1%)	2 ( 3.3%)
Gustavus Adolphus	0	0	2 ( 9.1%)	2 ( 3.3%)
(Attended by only one Justice)	( 6.7%)	( 4.3%)	( 4.5%)	
Allegheny		Indiana	Valparaiso	
Duquesne		Dickinson		
Jefferson		Markato State		
Union		Oberlin		
Academies	0	St. Vincent's	1 ( 4.5%)	8 (13.3%)
(Attended by only one Justice)		7 (30.4%)	( 4.5%)	
		Barre	Highland Park	
		Cazenovia		
		Marietta		
		New Hampton		
		Phillips Exeter		
		Rome		
		St. Ansgar's	4 (18.2%)	13 (21.7%)
Public Schools Only	4 (26.7%)	5 (21.7%)	22 (100%)	60 (100%)
Total:	15 (100%)	23 (100%)		

TABLE 7

Legal Education of the Minnesota Supreme Court Justices by Numbers and Percentages in Three Historical Periods

	1858-1890	1891-1930	1931-1968	Total
Private Law Office Only	10 (66.7%)	8 (34.8%)	0	18 (30.0%)
Law Schools	5 (33.3%)	15 (65.2%)	22 (100%)	42 (70.0%)
Ivy League	4 (26.7%)	2 ( 8.7%)	1 ( 4.5%)	7 (11.7%)
Harvard	3 (20.0%)	0	1 ( 4.5%)	4 ( 6.7%)
Yale	1 ( 6.7%)	0	0	1 ( 1.7%)
Pennsylvania	0	1 ( 4.3%)	0	1 ( 1.7%)
Columbia	0	1 ( 4.3%)	0	1 ( 1.7%)
Big Ten	0	10 (43.5%)	16 (72.7%)	26 (43.3%)
Minnesota	0	4 (17.4%)	14 (63.6%)	18 (30.0%)
Wisconsin	0	3 (13.0%)	0	3 ( 5.0%)
Michigan	0	1 ( 4.3%)	0	1 ( 1.7%)
Iowa	0	1 ( 4.3%)	0	1 ( 1.7%)
Northwestern	0	1 ( 4.3%)	0	1 ( 1.7%)
Chicago	0	0	1 ( 4.5%)	1 ( 1.7%)
Illinois	0	0	1 ( 4.5%)	1 ( 1.7%)
Ballston Spa	1 ( 6.7%)	0	0	1 ( 1.7%)
Albany	0	1 ( 4.3%)	0	1 ( 1.7%)
Creighton	0	0	1 ( 4.5%)	1 ( 1.7%)
Washington (St. Louis)	0	2 ( 8.7%)	0	2 ( 3.3%)
Minnesota College of Law	0	0	1 ( 4.5%)	1 ( 1.7%)
St. Paul College of Law	0	0	3 (13.6%)	3 ( 5.0%)
Total	15 (100%)	23 (100%)	22 (100%)	60 (100%)



TABLE 8

## Prominent Law Teachers of Minnesota Supreme Court Justices

<i>Court Justices</i>	<i>Dates</i>	<i>Law Teachers</i>	
Lafayette Emmett	1858-1865	Columbus Delano	Abolitionist Congress- man, Secretary of the Interior
Charles E. Flandrau	1858-1864	Thomas H. Flandrau	Partner of Aaron Burr
Thomas Wilson	1865-1869	John W. Howe	Congressman
John M. Berry	1865-1887	Ira Perley	Chief Justice of New Hampshire
S. J. R. McMillan	1864-1875	Edwin M. Stanton	Secretary of War
F. R. E. Cornell	1875-1881	Thomas A. Johnson	Prominent New York Jurist
Charles Vanderburgh	1882-1894	Henry R. Mygatt	"One of New York's most prominent lawyers"
Loren W. Collins	1887-1904	Francis M. Crosby	Minnesota District Judge
Charles M. Start	1895-1913	William C. Wilson	Justice of Vermont Supreme Court
Thomas Canty	1894-1900	Seagreave Smith	Minnesota District Judge
Calvin L. Brown	1913-1923	John H. Brown	Minnesota District Judge
Thomas D. O'Brien	1909-1911	George B. Young	Justice of Minnesota Supreme Court
James H. Quinn	1917-1928	William N. Plymat	Mankato Judge

justices were exposed to legal minds and personal contacts equal to or better than those available at the finest law schools.

## IX. GOVERNMENTAL AND JUDICIAL EXPERIENCE

Since one must be fairly well known to either the governor or the electorate to reach the Minnesota Supreme Court, it is not surprising that 86.7 per cent of all the justices at some time held a governmental office. In the first historical period, only Justices James Gilfillan, Christopher G. Ripley, and George B. Young did not. Ripley was the unknown Republican compromise candidate for chief justice in 1868, while Young was a relatively unknown, 34 year old lawyer appointed by Governor Cushman K.

TABLE 9

Highest Governmental Posts Held by the Minnesota Supreme Court Justices Prior to Their Appointments or Election by Numbers and Percentages in Three Historical Periods

	1858-1890	1891-1930	1931-1965	Total
Federal Government	0	0	2 ( 9.1%)	2 ( 3.3%)
Executive	0	0	2 ( 9.1%)	2 ( 3.3%)
Legislative	0	0	0	0
Judicial	0	0	0	0
Territorial Government	2 (13.3%)	0	0	2 ( 3.3%)
Executive	1 ( 6.7%)	0	0	1 ( 1.7%)
Legislative	0	0	0	0
Judicial	1 ( 6.7%)	0	0	1 ( 1.7%)
State Government	10 (66.7%)	21 (91.3%)	10 (45.5%)	41 (68.3%)
Executive	1 ( 6.7%)	5 (21.7%)	1 ( 4.5%)	7 (11.7%)
Legislative	2 (13.3%)	2 ( 8.7%)	2 ( 9.1%)	6 (10.0%)
Judicial	4 (26.7%)	14 (60.9%)	7 (31.8%)	25 (41.7%)
Regent	3 (20.0%)	0	0	3 ( 5.0%)
Local Government	0	2 ( 8.7%)	5 (22.7%)	7 (11.7%)
Executive	0	2 ( 8.7%)	3 (13.6%)	5 ( 8.3%)
Legislative	0	0	0	0
Judicial	0	0	0	0
Independent Boards	0	0	0	0
None	3 (20.0%)	0	2 ( 9.1%)	2 ( 3.3%)
Total	15 (100%)	23 (100%)	22 (100%)	60 (100%)

Davis in 1874, to the great surprise of the bar and the community. He did not run for election to a full term, but later served as Revisor of Statutes, Supreme Court Reporter, and lecturer at the University of Minnesota Law School.

No justice appointed or elected to the court in the second period was without previous governmental experience. In the third period, Justices John P. Devaney, Thomas Gallagher, Leroy E. Matson, Maynard E. Pirsig, and Theodore Christianson had no such experience, though at least three of them were politically active. Devaney, an active Democrat, resigned from the court in 1937 to assist in organizing Franklin D. Roosevelt's 1940 presidential campaign; Matson had been Executive Secretary of the State Republican Central Committee prior to his election; and Christianson's father had served as governor of Minnesota for six years.

In the earliest period, all of those having prior governmental experience had held their highest offices in state or territorial government, three of them as Regents of the University of Minnesota.<sup>46</sup> During the second period, all but John A. Lovely and Samuel B. Wilson, who had been county attorneys, held their highest posts in state government. This period also had the largest percentage of new justices whose highest governmental office was in the executive branch of state government. Justices Charles M. Start, Clifford L. Hilton, and Wallace B. Douglas were state attorneys general, while Justice Royal A. Stone had been an assistant state attorney general. Justice Thomas D. O'Brien had been the state insurance commissioner.

It has been argued that prior judicial experience at the trial level should be a prerequisite to membership on an appellate court. While such experience undoubtedly increases a judge's understanding, the system may also need men from the outside to question tradition and bring in new ideas. Thus, the ideal situation may be an appellate court with a balance between justices who do and do not have prior judicial experience. Fifty-one and seven-tenths per cent of the Minnesota Supreme Court justices had some prior civilian judicial experience. This is nearly the same percentage as Schmidhauser found for the United States Supreme Court.<sup>47</sup> Of the 31 justices who had prior judicial experience, in 29 cases it was at the trial level, 25 of

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46. Justices Isaac Atwater, John M. Berry and Greenleaf Clark.

47. Schmidhauser at 39.

TABLE 10

Highest Judicial Posts Held by the Minnesota Supreme Court Justices Prior to their Appointment or Election by Numbers and Percentages in Three Historical Periods				
	1858-1890	1891-1930	1931-1965	Total
Territorial Supreme Court .....	1 ( 6.7%)	0 —	0 —	1 ( 1.7%)
District Court .....	6 (40.0%)	12 (52.2%)	7 (31.8%)	25 (41.7%)
Local Court .....	0 —	1 ( 4.3%)	1 ( 4.5%)	2 ( 3.3%)
Supreme Court Commissioner .....	0 —	3 (13.0%)	0 —	3 ( 5.0%)
None .....	8 (53.3%)	7 (30.4%)	14 (63.6%)	29 (48.3%)
Total .....	15 (100%)	23 (100%)	22 (100%)	60 (100%)

those sitting on the district court bench. During the middle historical period, 69.6 per cent of the new justices had previous judicial experience, a significantly higher percentage than in any of the other periods. In the most recent period, the figure was only 36.4 per cent. Thus, while there has been an almost even balance between justices, with and without previous judicial experience, in recent years such experience has been less prevalent.

#### X. PRIMARY OCCUPATION

Every man who has ever served on the Minnesota Supreme Court has been a lawyer. This in itself makes the justices a special group, since their social backgrounds include similar educational and professional experience and associations typical of the upper classes in American society.

Only during the middle historical period did lawyers who were primarily politicians comprise a percentage of the membership of the Minnesota Supreme Court comparable to that of the United States Supreme Court,<sup>48</sup> and it was during this period that politicians comprised the lowest percentage of the United States Supreme Court in history.

A greater percentage of judges have reached the Minnesota Court than the United States Supreme Court. On both courts, this percentage was highest during the middle period. In the most recent period only six per cent of the justices of the United States Supreme Court were primarily judges before their appointments, as compared to 36.4 per cent of the Minnesota justices.<sup>49</sup>

Only two lawyers whose primary occupation was as a law school professor have reached the Minnesota court—Professor Maynard E. Pirsig of the University of Minnesota Law School, appointed by Governor Harold E. Stassen in 1942 to fill the last several months of an unexpired term, and Justice Edwin A. Jaggard, who was elected in 1904 and died in office in 1911.

Except in the middle period, the general or non-corporate practitioner has comprised a larger percentage of the Minnesota court than the United States Supreme Court, while the percentage of corporation lawyers has been substantially equal. The non-corporate trend is likely the result of greater difficulty in

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48. The figures were 30.4 per cent and 32 per cent respectively.

49. These figures may be somewhat distorted, since this is generally the last occupation before advancing to the supreme court and sometimes tends to be over-emphasized as constituting one's "primary" occupation.

TABLE 11

Primary Occupations of the Minnesota Supreme Court Justices by Numbers and Percentages in Three Historical Periods

Lawyers who were Primarily:

	1858-1890	1891-1930	1931-1968	Total
Politicians -----	1 ( 6.7%)	7 (30.4%)	2 ( 9.1%)	10 (16.7%)
Judges -----	6 (40.0%)	12 (52.2%)	8 (36.4%)	26 (43.3%)
Corporation Lawyers -----	2 (13.3%)	2 ( 8.7%)	2 ( 9.1%)	6 (10.0%)
General Practitioners -----	6 (40.0%)	0 —	5 (22.7%)	11 (18.3%)
Government Attorneys -----	0 —	1 ( 4.3%)	4 (18.2%)	5 ( 8.3%)
Academicians -----	0 —	1 ( 4.3%)	1 ( 4.5%)	2 ( 3.3%)
Total -----	15 (100%)	23 (100%)	22 (100%)	60 (100%)

acquiring a United States Supreme Court justiceship without the broader-based reputation that generally accompanies a judicial, political, or corporate practice career.

## XI. SUMMARY AND CONCLUSION

Significant differences appear in the social backgrounds of the men who reached the Minnesota Supreme Court in each of the three historical periods. The justices who served during the first period (1858-1891) were typical of the middle and late nineteenth century upper social classes in America and their social backgrounds correspond most closely to the social backgrounds of the United States Supreme Court justices as outlined by Schmidhauser. They were primarily the sons of fathers whose occupations were in the high social status categories. They were generally born in the small towns and rural areas of the eastern United States, especially New England. A large majority were of English, Scotch, or Northern Irish ethnic origin and were members of families which had been in the United States for several generations. They were usually affiliated with the traditionally high status Protestant religions. Those that received college training were educated at the Ivy League or small eastern schools. Most received their legal educations as apprentices or clerks in the private law offices of some of their states' most prominent citizens. All but one of those who went to law school attended either Harvard or Yale. Eighty per cent held some political office, while 46.7 per cent had some previous judicial experience. Sixty per cent were Republicans, and the number appointed to the court about equalled the number elected.

During the second historical period (1891-1930), the majority of the new justices still came from the upper social classes, but the type of upper class had changed to that of the midwestern rural or small town. They were the sons of farmers, born in rural areas of Minnesota and other midwestern states. Their fathers, though often members of families which had been in the United States for long periods, had moved west in the mid-nineteenth century. The ethnic origins of most of the new justices continued to be in the British Isles, and they were still primarily members of the higher social status religious groups. Those who attended a college or university attended schools in Minnesota or in other midwestern states. Eighty-seven and five-tenths per cent of all the justices who received their highest non-legal education in private academies served in this period—their

fathers likely being concerned about the adequacy of rural public schools. Their legal education was secured either at the University of Minnesota, other large midwestern universities, or in private law offices, a marked change from the previous period during which no justice received his legal education in the midwest. Every one of the new justices in this period served in state government—60.9 per cent as district court judges or commissioners of the supreme court—and 78.3 per cent were Republicans. Again, as in the previous period, about an equal number reached the court by appointment and by election.

During the first 72 years of statehood, Minnesota's population growth was in large measure due to substantial immigration by three ethnic groups—the Scandinavians, the Germans, and the Irish-Catholics. These groups, however, did not gain immediate representation on the court. In 1911, Governor Eberhart appointed Andrew Holt to the court, a portent of things to come. Justice Holt's parents were immigrants from Sweden who had settled on a farm in Carver County. Holt was educated in the rural public schools and at St. Ansgar's Academy in St. Peter, a Lutheran institution which later became Gustavus Adolphus College. He received his degree from the University of Minnesota Law School in 1880, became a municipal judge in Minneapolis in 1894, and became a district judge in 1904.

The social background of Justice Holt is typical of many men who reached the court during the most recent historical period (1931-1968). The new justices were primarily born and raised on the farms and in the small towns of Minnesota. Only two were of English origin, with the three above-mentioned immigrant ethnic groups contributing 90.9 per cent,<sup>50</sup> as compared with 13.0 per cent in the previous period. These justices were the children or grandchildren of nineteenth century immigrants. Lutherans and Catholics comprised 63.6 per cent of the court, as compared to 13.0 per cent in the previous period. Eighty-eight and two-tenths per cent of the new justices attending college received their college educations in Minnesota, while 81.8 per cent received their law degrees in Minnesota—77.8 per cent of these at the University of Minnesota. They gained their governmental experience less frequently in state government. All six of the new Irish-Catholic justices were Democrats, while the majority of Scandinavian and Lutheran justices were Republicans. Though this left the Republicans with a slight edge, the court has gen-

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50. Scandinavians contributed 45.5 per cent, Irish-Catholics 27.3 per cent and Germans 17.8 per cent.



erally become a two party institution. The composition of the court has begun to parallel the population composition of Minnesota.

Whatever the value of group social background data for use in predicting judicial behavior, this data does present an interesting portrait of the social origin and experiences of the 60 men who have served on the Minnesota Supreme Court and illustrates some important trends in the politics and society of Minnesota over the past 110 years. It also clearly shows that a majority of the justices of the Minnesota Supreme Court come from the higher social classes of Minnesota, just as the justices of the United States Supreme Court come from the higher social classes of American society.

## XII. APPENDIX

Below are listed the principal works available which provide biographical data on the justices of the Minnesota Supreme Court. The references are numbered to facilitate keying them into the list of justices which follows. Thus, the numbers under the name of each justice correspond to the numbers of the following books and articles.

## A. AVAILABLE BIOGRAPHICAL DATA SOURCES

1. HISTORY OF ST. PAUL MINNESOTA (C. Andrews ed. 1890).
2. Atwater, *Charles E. Flandrau*, MAGAZINE OF WESTERN HISTORY, April, 1888, at 655-56.
3. J. BURNQUIST, MINNESOTA AND ITS PEOPLE (1924).
4. T. CANTY, A PLAIN UNVARNISHED TALE OF A SELF-MADE MAN (1892).
5. T. CHRISTIANSON, HISTORY OF MINNESOTA (1935).
6. G. CLARK, THE DESCENDANTS OF NATHANIEL CLARK (1902).
7. J. CLEMENS, UNITED STATES BIOGRAPHICAL DICTIONARY, Minnesota volume (1879).
8. J. CORNELL, GENEALOGY OF THE CORNELL FAMILY (1902).
9. M. EDWARDS, MEMORIAL SERMON FOR THE HONORABLE SAMUEL J.R. McMILLAN (1897).
10. Elliott, *The Supreme Court of Minnesota*, THE GREEN BAG, A MAGAZINE FOR LAWYERS, March & April, 1892, at 113-76.
11. R. ESBJORNSON, A CHRISTIAN IN POLITICS (1955).
12. C. FLANDRAU, ENCYCLOPEDIA OF BIOGRAPHY OF MINNESOTA (1900).
13. Flandrau, *Judge Isaac Atwater*, MAGAZINE OF WESTERN HISTORY, July, 1888, at 254-60.
14. W. FOLSOM, FIFTY YEARS IN THE NORTHWEST (1888).
15. R. GUNDERSON, HISTORY OF THE MINNESOTA SUPREME COURT (1937).
16. Hallam, *A Midwest Tomboy of the 1870's*, Bloomfield and Number Five, MINNESOTA HISTORY, March, 1946, at 83-95.
17. C. HYDE & W. STODDARD, HISTORY OF THE GREAT NORTHWEST (1901).
18. G. LONGSDORF, HISTORICAL SKETCH OF THE MINNESOTA SUPREME COURT (1912).
19. THE BOOK OF MINNESOTANS (A. Marquis ed. 1907).
20. PROGRESSIVE MEN OF MINNESOTA (J. McLain & M. Shutter eds. 1897).
21. MINNESOTA HISTORICAL SOCIETY, MINNESOTA HISTORICAL SOCIETY SCRAPBOOKS (on file at the Society).
22. MINNESOTA SECRETARY OF STATE, MINNESOTA LEGISLATIVE MANUALS.
23. MINNESOTA SUPREME COURT, *Proceedings in Memory of* —.
24. PUBLIC AFFAIRS PRESS, THE NEW FRONTIERSMEN (1961).
25. Schochet, *Minnesota's First Supreme Court*, 11 MINN. L. REV. 98-106 (1927).

26. E. SHIELDS, ANCESTRAL CHART OF ROYAL A. STONE (1920).
27. H. STEVENS, HISTORY OF THE BENCH AND BAR IN MINNESOTA (1904).
28. James T. White Co., THE NATIONAL CYCLOPEDIA OF AMERICAN BIOGRAPHY.
29. WHO'S WHO IN AMERICA.
30. H. WHITE, *Who's Who in Minnesota* (1958).

B. BIOGRAPHICAL DATA SOURCES LISTED BY JUSTICES

Lafayette Emmett (1858-1865)

Bibliography: 10 15 25 28 (vol. 13)

Isaac Atwater (1858-1864)

Bibliography: 10 13 15 25

Charles E. Flandrau (1858-1864)

Bibliography: 2 10 15 23 (1903) 25 28 (vol. 22)

Thomas Wilson (1864-1869)

Bibliography: 10 12 14 15 28 (vol. 1)

Obituary: Minneapolis Journal, April 6, 1910.

S. J. R. McMillan (1864-1875)

Bibliography: 9 10 15 23 (1895) 28 (vol. 4)

John M. Berry (1865-1887)

Bibliography: 7 10 14 15 21 (vol. 1)

Christopher G. Ripley (1870-1874)

Bibliography: 10 15 28 (vol. 12)

James Gilfillan (1869-1870, 1875-1895)

Bibliography: 10 14 15 23 (1895) 27 28 (vol. 16)

George B. Young (1874-1875)

Bibliography: 7 10 15 27

F. R. E. Cornell (1875-1881)

Bibliography: 7 8 10 15 23 (1881)

Greenleaf Clark (1881-1882)

Bibliography: 1 6 10 12 15 28 (vol. 22)

William Mitchell (1881-1900)

Bibliography: 10 15 23 (1900) 27 28 (vol. 25)

Daniel Dickinson (1881-1893)

Bibliography: 7 10 15

Charles E. Vanderburgh (1882-1894)

Bibliography: 10 15 27 28 (vol. 6)

Loren W. Collins (1887-1904)

Bibliography: 10 15 23 (1912) 27

Daniel Buck (1893-1899)

Bibliography: 12 15 27

Thomas Canty (1894-1900)

Bibliography: 4 12 15 27

Charles M. Start (1895-1913)

Bibliography: 12 15 18 27 28 (vol. 13)

Calvin L. Brown (1899-1923)

Bibliography: 15 18 20 23 (1924) 23 (vol. 19)

- Charles L. Lewis (1900-1912)  
Bibliography: 15 18 23 (1936) 27
- John A. Lovely (1900-1905)  
Bibliography: 15 27  
Obituary: Albert Lea Enterprise, Feb. 5, 1908.  
Albert Lea Standard, Feb. 5, 1908.  
Minneapolis Journal, Jan. 29, 1908.
- Wallace B. Douglas (1904-1905)  
Bibliography: 3 12 15
- Edwin A. Jaggard (1905-1911)  
Bibliography: 15 19 23 (1911)  
Obituary: St. Paul Dispatch, Feb. 23, 1911.
- Charles B. Elliott (1905-1909)  
Bibliography: 15 20 23 (1936) 28 (vol. 15)
- David F. Simpson (1911-1912)  
Bibliography: 15 28 (vol. 20)
- Andrew Holt (1912-1942)  
Bibliography: 15 22 (1941) 28 (vol. 37)
- George L. Bunn (1911-1913, 1913-1918)  
Bibliography: 15 18 27 28 (vol. 18)
- Thomas D. O'Brien (1909-1911)  
Bibliography: 12 15 23 (1936)  
Obituary: Minneapolis Star, Sept. 4, 1935.
- Phillip E. Brown (1912-1915)  
Bibliography: 15 18
- Oscar Hallam (1913-1923)  
Bibliography: 15 16 19
- Albert Schaller (1915-1917)  
Bibliography: 12 15 23 (1934) 28 (vol. 26)
- James H. Quinn (1917-1928)  
Bibliography: 15 19 23 (1930)  
Obituary: Minneapolis Journal, Feb. 15, 1930.
- Homer B. Dibell (1918-1934)  
Bibliography: 15 22 (1921) 23 (1934)  
Obituary: St. Paul Dispatch, Feb. 17, 1934.
- Royal A. Stone (1923-1942)  
Bibliography: 15 19 21 (vol. 14) 26  
Obituary: Minneapolis Tribune, Sept. 14, 1942.
- Samuel B. Wilson (1923-1933)  
Bibliography: 15 17 19
- Clifford L. Hilton (1928-1943)  
Bibliography: 15 22 (1941)
- Ingervall M. Olsen (1930-1936)  
Bibliography: 15 22 (1931) 30 (1941)  
Obituary: Minneapolis Star Journal, June 28, 1943.
- Charles Loring (1930-1953)  
Bibliography: 5 15 22 (1961) 30 (1941)
- John P. Devaney (1933-1937)  
Bibliography: 15 28 (vol. 33)  
Obituary: St. Paul Pioneer Press, Sept. 22, 1941.

- Julius J. Olson (1934-1948)  
Bibliography: 15 30 (1941)  
Obituary: Minneapolis Tribune, May 24, 1955.
- Harry H. Peterson (1936-1950)  
Bibliography: 15 22 (1941) 30 (1941)
- Henry M. Gallagher (1937-1944)  
Bibliography: 5 15 22 (1941) 30 (1941)
- Maynard E. Pirsig (1942)  
Bibliography: 30 (1964)
- Thomas O. Streissguth (1942, 1944)  
Bibliography: 30 (1958)  
Obituary: St. Paul Dispatch, Dec. 22, 1950.
- Luther W. Youngdahl (1943-1946)  
Bibliography: 11 22 (1941)
- Thomas F. Gallagher (1943-1967)  
Bibliography: 22 (1961)  
Obituary: St. Paul Pioneer Press, May 13, 1943.  
(father's obituary)
- Clarence R. Magney (1943-1953)  
Bibliography: 22 (1949) 30 (1958)
- Leroy E. Matson (1945-1960)  
Bibliography: 22 (1961)  
Obituary: Minneapolis Tribune, Feb. 29, 1960.
- William C. Christianson (1946)  
Bibliography: 30 (1964)  
Articles: St. Paul Dispatch, March 26, 1946.  
Minneapolis Star, Sept. 30, 1949.
- Frank T. Gallagher (1947-1963)  
Bibliography: 5 22 (1961)
- Oscar R. Knutson (1948- )  
Bibliography: 5 22 (1961) 30 (1964)
- Theodore Christianson (1951-1955)  
Bibliography: 30 (1941)  
Articles: St. Paul Dispatch, Dec. 10, 1948.  
Minneapolis Star, May 12, 1950.  
Obituary: Minneapolis Star, Sept. 19, 1955.
- Roger L. Dell (1953-1962)  
Bibliography: 22 (1961) 30 (1964)  
Articles: Minneapolis Star, Dec. 24, 1952.
- Martin A. Nelson (1953- )  
Bibliography: 22 (1961)  
Article: St. Paul Pioneer Press, Oct. 28, 1934.  
Minneapolis Journal, Oct. 21, 1934.
- William P. Murphy (1955- )  
Bibliography: 22 (1961) 30 (1964)  
Article: St. Paul Dispatch, Sept. 24, 1953.
- Lee Loevinger (1960-1961)  
Bibliography: 24 29 (1963) 30 (1964)

James C. Otis (1961- )

Bibliography: 22 (1961) 30 (1964)

Article: St. Paul Dispatch, March 16, 1961.

Walter F. Rogosheske (1962- )

Bibliography: 22 (1961)

Robert Sheran (1963- )

Bibliography: 22 (1963)

C. Donald Peterson (1967- )

